Department for Culture Media & Sport

Broadband Cost Reduction Regulations

Government consultation response

04 July 2016

Contents

Introduction

1. These regulations seek to reduce the cost of rolling out high-speed broadband networks, by reducing spending on civil engineering works, which can represent up to 80% of the up-front cost of deployment[1]. The regulations create a system of rights and obligations that will ensure access to existing infrastructure on fair and reasonable terms and conditions, and require coordination of civil works that receive public funding. Both sharing of existing infrastructure and coordination of works should substantially reduce communications providers' up-front costs, potentially speeding up roll-out and enabling deployments that would otherwise not be commercially viable.

2. The consultation ran from 30 November 2015 until 25 January 2016. The consultation document is available on the GOV.UK website: https://www.gov.uk/government/consultations/eu-broadband-cost-reduction-directive

3. We received 56 responses to our consultation[2], mostly from businesses and regulators across the affected industries, all of which have been fully considered. We also held a series of informal workshops during the consultation to facilitate responses. This report focuses on the key themes and issues raised in consultation responses and by participants during our workshops.

4. Ofcom is responsible under the regulations for producing guidance relating to how it will administer the regulations and its role as the national dispute settlement body. Consultation responses have been shared with Ofcom and we have worked closely with them to develop this response.

5. The structure of this report differs slightly from the consultation document. In particular, some questions are presented in a different order where they are thematically similar or have been grouped where responses spanned more than one question or fielded similar responses.

6. The positions set out in this report supersede the consultation document, which was intended to stimulate discussion by respondents, and the consultation document should not be construed as establishing final policy positions.

[1] Analysys Mason (2008, 2012), ENGAGE (2014) and OFCOM (2010)
[2] A full list of respondents can be found at ANNEX A

7. The regulations reflect consultation responses and the positions set out in this report. The regulations and accompanying documents can be accessed online: http://www.legislation.gov.uk/uksi/2016/700/made.
   They transpose Directive 2014/61/EU subtitled *"on measures to reduce the cost of deploying high-speed electronic communications networks".*

8. The regulations apply throughout the UK, as their principal subject, telecommunications, is a reserved matter. Nevertheless, there are some policy areas where the regulations have incidental bearing on devolved matters (for example, some utility regulation) and DCMS has liaised with devolved administrations to ensure this is accounted for appropriately.

Parties affected and definitions

Physical infrastructure and undertakings subject to the Directive

QUESTION 1: Is there any class of physical infrastructure not mentioned in the Directive definition that may be suitable for sharing?
QUESTION 3: Do you consider further clarification is needed in relation to any of the definitions in the Directive?

Respondents made the following main points:

- Some infrastructure that resembles 'passive' PCN infrastructure should be considered 'active' elements of other non-communications networks. For example, sewerage pipes are an active element of the sewerage network and do not constitute 'passive infrastructure' under the Directive.
- Raw water assets may be subject to the Directive, though most will be unsuitable for sharing.
- In antenna installations the Directive doesn't apply to the antenna itself, which is active infrastructure.
- Passive infrastructure constructed under contract to provide a private network should not be subject to the Directive.
- Ports should be excluded from the definition of 'network operator'.
- There needs to be clarity regarding whether companies such as Google or Amazon would be subject to the Directive if they decide to provide a PCN. Openreach should be considered a PCN.
- A clear definition is needed for 'civil works' and for 'survey'.
- Definitions should make clear that private and bespoke communications networks are not subject to the Directive. A clear definition of Wholesale Infrastructure Providers is required.
- Clarification is needed on whether the Directive covers private communications infrastructure operated by non-PCN network operators.

GOVERNMENT RESPONSE

The purpose of the Directive is to ensure that access to physical infrastructure suitable for deploying high-speed broadband networks is made available on fair and reasonable terms. Therefore while in practice demand for access to some types of infrastructure may be low, such as sewers, the Directive includes them in the definition of physical infrastructure. The Directive definitions for 'network operator' and 'physical infrastructure' are based on the type of activity being carried out by an undertaking, and the nature of their infrastructure, and will apply to any new entrants. If the Directive applies to an undertaking, then any private communications infrastructure supporting the main service will be in scope. Network operators that provide private communications networks as their main service are not in scope in respect of those networks. Issues such as whether infrastructure is passive or active may periodically arise, and it will be for Ofcom to decide such matters if a dispute is brought forward.

QUESTION 2: Are there any organisations not listed above *[in the consultation document]*[3] that may be subject to provisions of the Directive?

Respondents made the following main points:

- Independent electricity Distribution Network Operators (IDNOs) should be subject to the provisions of the Directive.
- Water only companies are likely to own suitable assets, and there are both water companies and sewerage companies that supply non-potable water. The Directive will need to capture this infrastructure.
- The UK has substantial networked heating infrastructure, which should be captured by the Directive.
- Bridge operators and toll operators must be subject to the Directive.
- New entrants must be subject to the Directive in the same way as existing operators.
- Small fibre networks in residential or mixed developments must be subject to the Directive.
- Operators of waterways, such as rivers or canals, may be subject to the Directive.

GOVERNMENT RESPONSE

The Directive provides a list of the types of undertakings that constitute "network operators" according to the types of activities they carry out. We have retained this non-enumerative approach in the regulations. Where there is uncertainty we expect PCN operators and potential network operators to consider carefully whether infrastructure is subject to the Directive. The status of an undertaking as a 'network operator' will be subject to the dispute resolution process and determination by Ofcom in its role as the dispute settlement body.

Wholesale infrastructure providers

QUESTION 4: Are there cases where wholesale infrastructure providers provide a public communications network, and where they would therefore fall within the definition of a 'network operator'?

QUESTION 5: Should physical infrastructure operated by wholesale infrastructure providers be treated in the same way as physical infrastructure operated by other 'network operators'? What would be the impacts of doing so?

The key respondents to this question were wholesale infrastructure providers. They argued that where a wholesale infrastructure provider also provides a PCN, only the relevant PCN infrastructure should be subject to the Directive, and that at any event the Directive precludes access where equivalent wholesale physical infrastructure access is assured under fair and reasonable terms and conditions.

[3] A list of organisations that may be subject to the Directive was provided on pages 9-10 of the consultation document.

GOVERNMENT RESPONSE

The regulations follow the wording of the Directive closely, and the intention is that a maximum of suitable physical infrastructure should be subject to its provisions. While 'pure' wholesale infrastructure providers (WIPs) are outside the scope of the regulations, a company providing both wholesale infrastructure and a PCN would be in scope. Where a wholesale infrastructure provider also provides a PCN, respondents correctly identify it may still be possible to refuse access under article 3(3)(f) where wholesale physical access is already assured on fair and reasonable terms and conditions. In the event of a dispute, it will be for Ofcom to determine whether the infrastructure in question is subject to the Directive or whether a refusal is justified.

SECTION SUMMARY

(1) The status of an undertaking as a 'network operator' will depend on the activities they perform and the nature of the infrastructure they operate. The regulations closely follow the definitions as worded in the Directive.
(2) Wholesale infrastructure providers are not automatically subject to the Directive, and do not acquire rights under the Directive, unless they operate a PCN.
(3) The Directive as a whole applies to physical infrastructure that is both publicly and privately funded
(4) The status of an undertaking as a 'network operator' and whether infrastructure is subject to the Directive will be subject to dispute resolution through Ofcom.
(5) Ofcom will produce implementation guidance.

Right to access information on existing infrastructure and planned works

Systems for providing information

QUESTION 11: Do you agree with the process that we have set out for requesting access to the 'minimum information' on physical infrastructure and civil works?

QUESTION 12: What do you think might be examples of strong cases for an extension of the time period allowed to respond to a request?

Respondents made the following main points:

- Most respondents said the time allowed for providing information should not start until a complete bona-fide request and any required upfront payment has been received.
- Some respondents asked for more guidance on the type and amount of information that is needed in response to a request.
- Respondents suggested possible scenarios in which they felt extra time may be required to respond, such as:
    - Detailed work is necessary to determine future capacity requirements
    - Infrastructure is unmapped
    - Information requested is particularly detailed, complex or otherwise substantial (e.g. bulk requests)
    - Protection of sensitive information must be agreed prior to sharing information
    - A request is incomplete or unclear
- Some respondents said no extra time should be allowed and that it is the duty of the asset owner to maintain up-to-date and accessible records.

GOVERNMENT RESPONSE

In order to ensure there can be no dispute about whether or not a request has been made, the Government considers that measures to verify credentials or process payments should not determine when the period for responding to a request begins. We expect Ofcom to be reasonable in its handling of disputes about missed deadlines. We therefore do not think it appropriate to establish a more detailed definition of a 'complete request'. We welcome the range of scenarios for deadline extensions that respondents provided, but consider that not all of these are appropriate (e.g. unmapped infrastructure, where there is no requirement under the Directive to provide information).

QUESTION 7: Where there are existing systems for storing and sharing infrastructure information, will you be able to use them either as they are or with minor adjustments to comply with the requirements of the Directive? If you won't be able to, why not?

Respondents made the following main points:

- Most respondents agreed that they have existing systems in place that could be used to meet the Directive's information sharing requirements.
- Communications and utility network operators provide annual roll-out plans to local authorities, therefore this information is already publicly available in many cases.
- Communications providers provide annual data for Ofcom's infrastructure report.
- The format of responses to requests for information made under the Directive will vary between infrastructure owners.
- Introducing a standardised format for responses would increase cost.
- Some systems need amendments to comply with Directive requirements and network operators would seek to recover the resulting costs from requesters.
- Public sewer records can be inspected free of charge at the offices of the owner or local authority, and copies are available for a fee.
- Some records have a history of poor maintenance so information may not be readily available or may be expensive to retrieve.
- Information relating to some planned or envisaged works may not be readily available using existing systems, the cost to install new systems would not be proportionate to the potential savings given the high-level of transparency that already exists in the UK, such as that required by the New Roads and Street Works Act.
- In some cases it is difficult to anticipate whether existing systems will be adequate until the granularity of information required is clearer.

GOVERNMENT RESPONSE

Government has sought to minimise the administrative burden in complying with the information sharing requirements of the Directive. The implementing regulations do not create a specific requirement to develop new systems, map infrastructure that would be otherwise unmapped, or standardise the format of responses to requests. This will ensure maximum compatibility with existing processes and systems, keeping costs low. Where existing systems are inadequate and new systems are necessary to respond to requests efficiently, the regulations will allow for the recovery of costs from requesters.

This minimum approach is without prejudice to any further infrastructure mapping requirements that may be introduced by subsequent Government policies.

Preventing unauthorised access to information

QUESTION 8: How do you propose to verify the credentials of a requester, i.e. that a request is from a genuine (or prospective) public communications network operator and for the stated purpose?

Respondents made the following main points:

- Requesters will usually be known to the network operators and credentials will be readily verifiable.
- Status as a Code power operator should be sufficient credentials.
- Requesters that are not known to network operators will be expected to verify their capability to deploy the network elements in question.

- To prevent frivolous requests, access providers may require requesters to demonstrate serious intent to deploy network elements, including financial credentials.
- Existing industry processes will be used both to verify bona fides and protect confidentiality, such as NDA agreements.
- There should be recourse to Ofcom where the credentials of a requester are in doubt.
- Initial contact may take longer than subsequent requests as contractual relationships are formed and data sharing and protection arrangements are put in place.

GOVERNMENT RESPONSE

Government supports reasonable measures to verify the credentials of a requester and agrees with respondents that existing practices to protect confidentiality will continue to apply in most cases. In further agreement with the majority of respondents, our view is that comprehensive checks (e.g. financial checks) will not usually be necessary. Parties will have access to dispute resolution in case of disagreement.

Nature of information to be shared under the Directive

QUESTION 14: What type of and how much information is required in order for the 'minimum information' to be useful (i.e. to inform a decision to request a survey or access to infrastructure, or to co-ordinate civil works)?

Respondents made the following main points:

- A number of details are likely to be required in response to a request, including:
  - Specific design requirements, including splicing chambers, cable maintenance loops etc.
  - Validation for health and safety and specific access accreditations
  - Single-man working exclusion zones
- Openreach currently provides ordnance survey map prints of duct network records including identifiers and distance between ducts, for either a whole exchange area or a chosen smaller area within the exchange area, as well as the Openreach pole catalogue. Given that this process was developed with the UK industry, similar approaches and costs might be expected from other providers.
- The infrastructure operator should determine how much information should be provided to requesters.

Non-telecoms operators made the following main points:

- In relation to sewer assets, respondents provided details that are likely to be required in response to a request:
  - location; depth; diameter; material of construction; type of flow; whether pumped or gravity-fed and details of any associated ancillary equipment
  - More generally, location of cabinets and mains distribution unit, and location and depth of other utilities
- One respondent said unambiguous statements should be required about BTs investments in next-generation access networks 12 months in advance to allow local authorities to seek alternative solutions where investment is not forthcoming.

GOVERNMENT RESPONSE

Government has ensured the drafting of the regulations remains as close as possible to the wording of the Directive, including in relation to 'minimum information'. We have shared respondents' views with Ofcom for consideration in the context of their role as the dispute settlement body.

Limiting minimum information

QUESTION 15: Do you agree that the use of the wording in the Directive [regarding limiting minimum information] is appropriate and should be copied into the regulations? Do you think the regulations should explicitly allow network operators to limit "information which may harm competition"?

QUESTION 16: Do you think additional measures should be used to ensure respect for confidentiality and operating and business secrets? If so what measures do you think would be appropriate? Will it be sufficient to leave these arrangements to be agreed between requesters and the relevant network operator?

Telecoms operators made the following main points:

- Most respondents said commercially sensitive information could be adequately protected with non-disclosure agreements and contracts to outline how the information can be used.
- Some respondents said the implementing regulations should explicitly allow network operators to limit "information which may harm competition".
- One respondent said the Directive was not aligned with EU competition requirements
- Ofcom General Condition 1 currently protects confidentiality, requiring that information from interconnection negotiations cannot be used for other purposes. GC1 should be extended to cover "Network Access" to prevent information being reused for other purposes.

Non-telecoms operators made the following main points:

- Respondents agreed that the wording in the Directive is appropriate and that non-disclosure agreements will be sufficient to protect information.
- Respondents said it might be necessary to limit information to protect safety and security, particularly in relation to critical national infrastructure (CNI).

GOVERNMENT RESPONSE

The Directive is without prejudice to other community rules and regulations including competition law. We intend network operators to apply sensitive and appropriate requirements regarding confidentiality, and to limit information only where strictly necessary. There may be cases in which it is necessary to confirm handling of requests with Ofcom, other statutory regulators or relevant Government Departments. We have provided a mechanism for refusing requests on national security grounds, which will include any requests for information about critical national infrastructure. Any limiting of information will be subject to the dispute mechanism operated by Ofcom. The regulations require protection of information once shared, and provide a mechanism to enforce this duty through the courts.

Charging for information and surveys

QUESTION 9: Do you agree that cost-recovery is the best approach to charging for providing access to information?

Most respondents agree that cost recovery is the best approach to charging for information sharing. Some respondents felt it was not appropriate for network operators to charge where they already have a statutory duty to record and/or provide information. One respondent suggested that charges should be above cost to prevent frivolous requests.

QUESTION 10: Would you seek to charge for access to the minimum information? How might you calculate and collect this charge?

Most respondents said they would charge on a cost recovery basis, while some said they would not charge initially but may charge in future depending on request volumes. A minority of respondents said they would seek to charge a minimum fee at a level above cost. One respondent said they would set up an online system and charge for access to that system as well as any additional information.

QUESTION 13: What will be the likely costs of carrying out surveys in most cases? How should costs be shared fairly?

Respondents generally agreed that the cost should fall on the party that will benefit from the survey, and that where both the requester and infrastructure owner would benefit then costs should be equally shared. Responses indicated that costs for surveys would vary depending on the type of infrastructure and by network operator.

GOVERNMENT RESPONSE
The Government considers that the terms, including charges, for providing access to information must be fair and reasonable. Parties will have access to dispute resolution in case of disagreement.

Responding to requests for information about 'envisaged' civil works

QUESTION 31: Do you agree that works carried out solely under permitted development rights are generally minor works and consequently unsuitable for coordination?

All respondents agreed that works carried out solely under permitted development rights are generally minor and consequently not suitable for coordination.

GOVERNMENT RESPONSE

Government has not required information to be provided relating to works that are carried out exclusively under permitted development rights, where prior approval is not need. Respondents agreed that such works are not suitable for coordination, therefore the Government does not see merit in requiring the sharing of this information. Article 5(2)(c) makes clear that the Directive only applies to works for which a permit granting procedure is required, and this is also clear from the wording of article 6(1).

QUESTION 30: Do you agree that information relating to works "envisaged" within the next 6 months should only be available from the network operator, and that it would be unreasonable to expect any third party to handle such information?

- Most respondents agreed that information relating to works "envisaged" within the next 6 months should not be available via the single information point (SIP) or through any other third party, and should only be made available directly from the network operator on request.
- Some respondents recognised that this information is already publicly available.
- One respondent said that network operators should not be mandated to provide any information relating to "envisaged" works.

GOVERNMENT RESPONSE

Information relating to "envisaged" works is by its nature changeable and the administrative burden on a third party (i.e. a SIP) to maintain such information is likely to considerably outweigh the benefits associated with making it available from a single body. The UK planning and street works regimes already require a high degree of information transparency in relation to planned works, providing opportunities for coordination. Where information on planned works is not publicly available then it should be available on request directly from the network operator.

QUESTION 32: Do you agree that network operators should publish responses to requests for the minimum information relating to planned civil works?

QUESTION 33: What measures do you propose to ensure that responses to requests for the minimum information relating to planned civil works are widely available to all PCN operators?

Respondents made the following key points:

- Most respondents disagreed that responses to requests for information should be published and disagreed with the making of additional information available via the SIP.
- Respondents said that the Directive allows for the protection of confidential information and most information shared under the Directive will be shared with adequate protection measures in place. It is therefore not appropriate to publish this information.
- Most respondents said that the UK planning regime is already adequately transparent in relation to planned civil works, planning authorities publish planning permit applications and street works maps on their websites.
- Some respondents said that they would publish information they provide in response to requests to ensure they only had to provide the same information once.

GOVERNMENT RESPONSE

Government will require publication of responses to requests for information about civil works, subject to any further limiting of the information that may be required. This will ensure that knowledge of such exchanges does not remain exclusively bilateral, so that PCN operators have equal opportunities to request coordination.

SECTION SUMMARY

(1) Requests for 'minimum information' should be made directly to the relevant network operator.
(2) Existing systems may be used where desired, providing they supply the minimum information.
(3) The minimum information must be made available only where it already exists.
(4) Network operators may verify requesters' credentials provided this process is proportionate, and a reasonable charge may be made for accessing the minimum information.
(5) Network operators may require non-disclosure agreements or make practical information handling requirements to protect the information they provide.
(6) The regulations follow the wording of the Directive closely regarding limiting information. Information should be limited only where strictly necessary, and it may sometimes be appropriate to confirm handling of requests with Ofcom, other statutory regulators or relevant Government Departments.
(7) We provide exemptions to information sharing requirements for some infrastructure that is not technically suitable for sharing, and provide a mechanism for refusing requests on national security grounds.
(8) The regulations require protection of information once shared, and provide a mechanism to enforce this duty through the courts.
(9) We do not establish detailed prerequisites for making information requests, and the period for providing information will start immediately when a request is made. Extensions to deadlines should be considered individually.
(10) Both parties will have recourse to Ofcom where requests or terms offered are considered unreasonable.
(11) Information relating to "envisaged works" should be obtained directly from the network operator, as its changeable nature makes distribution via a third party disproportionate.
(12) Network operators must publish answered requests for information about civil works, subject to any further limiting of the information that may be necessary.
(13) Ofcom will produce implementation guidance, and may prescribe forms for administering the regulations.

Access to existing physical infrastructure

Ability to provide access and reciprocal rights for non-PCN networks

QUESTION 21: Do you agree that, in practice, PCNs already enjoy a right to offer access?

Most respondents agreed that PCN operators and other infrastructure owners already enjoy a right to offer access to their physical infrastructure. Additionally, respondents suggested that price regulation for utility companies may provide a disincentive to share their infrastructure, and that wayleaves and leases would remain a key issue. One wholesale infrastructure provider noted that competitive incentives restrain sharing, not regulatory requirements.

GOVERNMENT RESPONSE
The regulations reflect that we do not consider that legislation is needed to enable PCNs and other network operators to offer access. Infrastructure sharing is already widely encouraged and incentivised and we do not propose any changes to price regulation for utility companies.

QUESTION 22: Do you agree that there should be no reciprocal right for non-communications networks to request access to share communications infrastructure? (E.g. an energy network operator should not have a right to request access to communications infrastructure in order to roll out its electricity network)

A majority of respondents correctly noted that a reciprocal right for non-communications networks to access PCN infrastructure is outside the minimum requirements of the Directive. Several utility companies and one transport operator suggested such a right may be helpful in reducing costs where non-communications networks require communications services.

GOVERNMENT RESPONSE
We have not created such a right as this would go beyond the minimum requirements of the Directive and the Government has a policy to not “gold plate” European directives. However, non-communications networks remain free to negotiate such access on a reciprocal basis with PCN operators without recourse to the regulations, and this may encourage reciprocal sharing of infrastructure on favourable terms.

Access pricing, the principle of granting access, and downstream use of infrastructure

QUESTION 17: Do you agree that that the factors we have identified are likely to be relevant to the pricing of access?

Telecoms operators and wholesale infrastructure providers made the following main points:

- Openreach should be subject to the Directive, and in particular it should be possible to request duct access from Openreach under the Directive where this is not possible under existing significant market power (SMP) remedies.
- The regulations must make clear that requests for access can be refused in a competitive context.
- The pricing principles set out in the consultation are wrong and confusing or misleading. The wording of the Directive should be sufficient to ensure fair and reasonable access prices.
- It is critical that Ofcom's role under the Directive be kept clearly separate from its duties under the Communications Act.
- Factors identified would be relevant to setting prices, but an exhaustive treatment is not possible, and should reflect the impact on investments and should include the potential impact on future investments.
- Pricing under the Directive should reflect the cost circumstances of the facility for which access is sought.
- The current Openreach passive infrastructure product should satisfy the requirements of Article 3, and pricing under that product is fair and reasonable because it has been agreed with industry. The principles stated for non-competitive access are appropriate.
- Access prices should be based on cost and Ofcom's current approach to pricing. Government should either publish detailed guidance or leave the matter wholly to the dispute settlement body.
- The suggestion that some types of access could attract a price nobody would pay is concerning. Cost based pricing should be the starting point.
- There is no need for separate pricing regimes for competitive and non-competitive access. Non-competitive access should provide for making a reasonable profit, and compensatory pricing risks damaging the extensive sharing of utility infrastructure that already takes place.
- Pricing might be appropriately based on the Efficient Component Pricing Rule (ECPR), a form of 'retail minus' pricing.
- If local authority infrastructure is in scope, appropriate pricing will be essential to maintain incentives and prevent indirect state aid. Administrative pricing for this access may not be appropriate.

Non-telecoms operators (including several local authorities) made the following main points:

- There is a range of technical, operational and regulatory factors that will contribute to pricing.
- Examples should be provided of good practice, with pricing scenarios
- Pricing should be based on Long Run Marginal Costs and must include the cost of reaching and managing sharing agreements.
- Companies should publish guidance on how they will approach access and pricing.
- Factors mentioned in the consultation document are relevant, but Government should establish formulas to compensate non-competitive access. The concept of option value should be better defined.
- Infrastructure owners should be able to make a small profit, and the presence of a dispute mechanism will prevent extraction of an unusually large profit.
- Respondents generally agreed that principles for pricing non-competitive access are reasonable.

GOVERNMENT RESPONSE

Government has ensured that the implementing regulations follow the wording of the Directive closely, and we recognise that it must be for Ofcom to determine access prices where appropriate, in the context of any dispute between an access seeker and infrastructure operator. Ofcom will publish high-level principles on companies' responsibilities and the handling of disputes, and may supplement this with more detailed guidance as and when appropriate.

QUESTION 18: Do you agree that minimising the cost of access for installing communications infrastructure achieves the aims of the directive?

Telecoms operators and wholesale infrastructure provides made the following main points:

- The Directive does not require separate pricing regimes for competitive and non-competitive access. The Directive does not refer to minimising costs through compensatory pricing. Pricing must also prevent distortion of upstream competition (i.e. the market for competing physical infrastructure). The pricing regime for competitive access must allow a return to investors consistent with the risks taken in infrastructure competition. For non-competitive access the impact on incentives to invest in bespoke PCN infrastructure should be considered.
- Access pricing for competitive requests should reflect the investment case of the infrastructure owner, and must protect investment incentives for rolling out PCN networks.
- The aim of the Directive is to minimise civil engineering costs. The processes for providing access means access seekers will consolidate and target requests.

Non-telecoms operators (including several Local Authorities) made the following main points:

- Prices must reflect costs and ensure there is no cross-subsidy from network operators' costs.
- Sharing sewer infrastructure can be more expensive than alternatives.
- It is difficult to see that using existing gas infrastructure would reduce costs.
- Reducing the cost of access for installing communications equipment will achieve the aims of the Directive.

GOVERNMENT RESPONSE

The question about minimising the cost of access for installing communications infrastructure was intended as a discussion point and we recognise that views on this vary even within individual sectors. However, we believe there is merit in aiming to reduce the cost of access and that this is in line with the aims of the Directive. Provision of access must be on fair and reasonable terms, and the regulations follow the wording of the Directive closely. Article 3(5) of the Directive makes clear that any price set by Ofcom must ensure that the infrastructure owner has a fair opportunity to recover its costs, and must take into account the impact of access on the infrastructure operator's business plan and investments. Ofcom will publish high level principles to facilitate compliance.

QUESTION 19: How should fair and reasonable [price] be interpreted when there is a potential alternative use for a given physical infrastructure and this use can be associated with an option value?

Telecoms operators and wholesale infrastructure provides made the following main points:

- Ofcom will need to resolve pricing disputes on a case-by-case basis with regard to the legal framework applicable to each dispute.
- The option value for non-competing infrastructure must consider the viability of any planned use by the infrastructure owner, to avoid generalised refusals on the basis of future use. The requirements on BT Openreach for providing passive infrastructure access may provide a model for this.

Non-telecoms operators (including several local authorities) made the following main points:

- Prices should include maintenance and operation costs and a margin that accounts for risk and future liability relating to the main function of the infrastructure.
- The infrastructure owner will have discretion to decide what is fair and reasonable, which may frustrate access.
- Network owners must be able to recover costs and make a reasonable return.
- It will be difficult to police appropriate wayleave arrangements for infrastructure sharers.
- Pricing should be based on infrastructure owners' expertise, evidence of third party costs and procurement best practice.
- There is no option value associated with some infrastructure (e.g. sewers) but prices must cover additional maintenance. Utilities should be incentivised to share infrastructure - a key barrier to sharing. Compensatory pricing is at odds with the wording of the Directive, as the dispute body must consider the business plan of the infrastructure owner when setting a price.
- Prices must relate to option value and the prospect of that option being exercised.
- Prices should reflect the potential increased cost in replacing capacity given up to a PCN sharer.

GOVERNMENT RESPONSE

Respondents have identified a range of potential costs and considerations that may apply when pricing access to non-telecoms infrastructure. The regulations provide a suitable degree of flexibility to allow Ofcom to consider all relevant factors when setting access prices.

QUESTION 23: Do you agree that there should be no restriction on the downstream use of shared infrastructure?

Answers from telecoms operators varied according to whether the operator was a potential provider of access or a prospective access seeker. Potential providers of access made the following main points:

- The Directive was not intended to apply to business connectivity, and the Directive was intended to apply only to consumer broadband connections.
- Unrestricted access effectively provides dark fibre access, which is excluded from the Directive.

- Infrastructure owners should be allowed to offer restricted access, provided this is on fair and reasonable terms. This may suit the needs of some access seekers better than unrestricted access.
- There should be no restrictions on downstream use.
- Ofcom must confirm the precise scope of access.

Prospective sharers made the following main points:

- There should be no restrictions on downstream use.
- Policing downstream use presents practical difficulties, but infrastructure owners should be allowed to offer restricted access, provided this is on fair and reasonable terms.

Non-telecoms operators either did not respond to this question, or simply agreed or disagreed with the principle of unrestricted access without providing accompanying commentary or justification.

GOVERNMENT RESPONSE
The Directive does not place any limitation on downstream use of physical infrastructure accessed under the Directive other than requiring access to be with a view to deploying elements of high-speed electronic communications networks. We do not intend to go further than the requirements of the Directive by creating such limitations. It should be noted that the Directive does not seek to prevent access to physical infrastructure to install new fibre, only to protect dark fibre installed by network operators, as this is likely to be associated with future needs. We are not opposed to the principle of infrastructure owners offering tiered access, but this cannot be a substitute for the unrestricted access required by the Directive. It will be for Ofcom to consider whether the terms of such access, including price, are fair and reasonable in the event of a dispute.

Administrative processes for making access requests

QUESTION 20: Do you agree that using a standard prescribed will simplify the administrative aspects of making requests?

Several telecoms operators suggested all relevant information should be provided before the time limit commences, including establishing requester credentials and confidentiality arrangements. One telecoms operator suggested that Openreach's passive infrastructure product is based on industry agreement and provides a model for interactions. Other respondents agreed there should be sufficient information in any form to process requests, though one respondent said that forms should be kept simple. One utility company suggested a single form for each type of utility.

GOVERNMENT RESPONSE
The regulations ensure Ofcom has flexibility to set administrative requirements where it considers these appropriate.

SECTION SUMMARY

(1) The regulations closely follow the wording of the Directive in relation to the price of access to existing physical infrastructure. It must be for Ofcom to determine access prices where appropriate, in the context of a dispute.

(2) A PCN provider cannot simply refuse access for anti-competitive reasons.

(3) The right to access physical infrastructure does not affect the rights of landowners or the need to obtain appropriate wayleaves to roll out networks.

(4) We do not propose to create any new right to offer access and consider that this already exists both for PCN and non-PCN infrastructure.

(5) We do not propose to create a right for non-PCN networks to access the physical infrastructure of PCN networks.

(6) We do not propose to limit the types of products that should be delivered using shared physical infrastructure or to restrict this to any geographic area or market segment.

(7) Exemptions provided for under Article 4(7) may constitute reasonable grounds for refusing access under Article 3(3).

(8) Ofcom will produce implementation guidance where appropriate, and may prescribe forms for administering the regulations.

Right to coordinate civil engineering works

Works financed by public means

QUESTION 6: Will it be sufficiently clear what civil work is financed by public means, and what is not?

QUESTION 24: Do you agree with our definition of works fully or partially funded by public means?

Respondents made the following main points:

- A large majority of respondents agreed with the definition of 'publicly funded' civil works
- Some respondents said it would not be clear in practice which works were publicly funded and which were not.
- Some respondents said the definition needed further clarification, with one respondent saying works carried out by way of a Broadband Delivery UK grant should be in scope.
- One responded said it was not clear if the presence of a public sector end-user would mean that upstream works were indirectly publicly funded.

GOVERNMENT RESPONSE
Respondents generally agreed that the meaning of publicly funded works is clear and we do not consider further definition to be necessary. The identity of the end-user of the network is not directly relevant to whether works are financed by public means. Instead, the works themselves must be fully or partially Government funded. The requirement for coordination is independent of whether works are executed by a private undertaking or a public body.

Refusal to coordinate works

QUESTION 25: Do you agree with our interpretation of the possible grounds for refusing coordination of publicly funded works?

Most respondents agreed with the grounds for refusal set out. One respondent said that coordination of works is complex and not achievable within one month. Another respondent said that Highway Authorities maintained control over civil works and not network operators.

QUESTION 26: Do you agree that we should not provide rules in apportioning costs?

Most respondents agreed that the Government should not provide rules in apportioning costs and parties should be free to negotiate terms on a fair and reasonable basis. One respondent said it was essential for rules to be provided.

GOVERNMENT RESPONSE

We have implemented the proposals as set out in the corresponding section of the consultation. The proposals preserve existing processes and the relevant authorities will continue to coordinate works where this currently happens (e.g. street works). Works do not need to be fully coordinated within one month, instead the request to coordinate must be granted or refused within one month. This should provide sufficient time to give proper consideration to a request and decide whether or not it will be feasible to coordinate works.

SECTION SUMMARY

(1) Requests to coordinate civil works, which are fully or partially funded using public means, must be granted except where one of the permitted refusal grounds applies.
(2) We have not created rules on apportioning costs when coordinating works.
(3) The requirement for coordination is independent of whether works are executed by a private undertaking or a public body; the works themselves must be publicly funded.

Permit granting

Analysis of existing permit regimes

QUESTION 27: Are you aware of any other permits that are normally required in order to carry out civil works to roll out high-speed electronic communications networks?

QUESTION 29: Do you agree with our analysis and conclusion that no further action is required in order for the UK to comply with Article 7(3) of the Directive?

Respondents made the following main points:

- Respondents agreed with the list of permits set out in the consultation and that these are compliant with the 4 month deadline for decisions required by the Directive
- Some respondents said that temporary traffic regulation orders (TTROs) may be required
- Respondents agreed that the UK planning regime is already compliant with Article 7(3) of the Directive and no further action is required

GOVERNMENT RESPONSE

Respondents agree that the UK is already compliant with the requirement for any permissions necessary to roll out communications networks to be decided within four months. Government has not made any changes to existing regimes. Analysis and statistics suggest that TTROs are required only in a minority of cases and there is no evidence to suggest this creates delays in network deployment. As TTROs are not generally required in order to deploy networks, we do not propose to introduce any additional deadline for processing applications.

QUESTION 28: Do you agree that there should be no additional administrative appeal route for compensation in case of non-compliance with deadlines for deciding permit applications?

Respondents generally agreed there should be no additional recourse to compensation and that effective appeal routes already exist, though one local authority suggested there should be additional recourse to compensation.

GOVERNMENT RESPONSE

Respondents supported the Government's proposal not to introduce any new route for appeal or compensation for delays to permit applications. The regulations do not introduce a new appeal or compensation route in this context.

SECTION SUMMARY

(1) Existing permits throughout the UK already comply with the requirements of the Directive;
(2) The regulations do not create any new right to compensation for delays to permit applications

Single information point

QUESTION 34: Do you agree that the planning authorities (all authorities with a responsibility for planning) are the correct designated bodies to perform the functions of the SIP?

QUESTION 35: Do you agree that the planning authorities (all authorities with a responsibility for planning) already perform the necessary functions to comply with the minimum requirements of the Directive?

Respondents made the following key points:

- Most respondents agreed that planning authorities are the correct bodies to perform the functions of the SIP, and already perform the functions necessary to comply with the minimum requirements of the Directive.
- One respondent said that multiple SIPs would not further the objectives of the Directive.

GOVERNMENT RESPONSE

Government considers that planning decision making bodies already carry out the functions required by the Directive. We therefore have not established a centralised SIP. Respondents generally agreed that a centralised SIP would be disproportionate and would raise complications around data integrity and security.

SECTION SUMMARY

(1) Competent bodies already carry out SIP functions across the UK.
(2) Network operators may redirect requests where the information is already available elsewhere, e.g. in a published planning application.

In-building physical infrastructure

QUESTION 36: Do you agree that in-building physical infrastructure should not count as physical infrastructure belonging to the PCN operator?

Respondents made the following main points:

- Infrastructure installed by PCN operators should not count as in-building infrastructure.
- There should be distinction between in-building infrastructure designed to provide access to the public network and corporate solutions creating a private dedicated network. The corporate network solution is likely to be removed when a customer contract expires.

GOVERNMENT RESPONSE
Most respondents agreed with the Government's proposals that infrastructure installed by PCN operators should not generally count as in-building physical infrastructure, and that requests for access should normally be made to the building owner.

QUESTION 37: Do you agree with our proposal not to provide exemptions where an existing wholesale network is provided?

Responses to this question were primarily from PCNs and generally agreed there should be no exemption. One respondent suggested creating an exemption that would only apply in the case of network duplication, but would not apply if the PCN intends to roll out a newer technology.

GOVERNMENT RESPONSE
We do not propose any exemption from the in-building physical infrastructure access requirements. An exemption would not be effective, as a determined PCN operator could seek to rely on the Electronic Communications Code to gain access regardless of the Directive (and can already do so). Any access to the in-building infrastructure agreed under the Directive remains subject to the requirement for a wayleave, and this ensures an appropriate level of protection for in-building deployments that have been contracted by the building owner.

QUESTION 38: Do you agree with our proposal not to provide rules for compensating damage, on the grounds that the existing recourse to the courts is sufficient?

A majority of respondents noted that compensation for damages could be dealt with in contractual/commercial negotiations. One respondent said that “damage to apparatus” may require new compensation rules, and two respondents expressed concern with the time and funding required for court proceedings.

GOVERNMENT RESPONSE

Respondents generally agreed that appropriate relief is available through the courts. The regulations provide no new rules for compensation.

SECTION SUMMARY

(1) The requirements of Article 9 do not alter the need to obtain a wayleave to access the property on which in-building infrastructure is installed. PCN operators may be able to obtain a wayleave under the Electronic Communications Code.

(2) In multiple dwellings, the property owner (not another PCN provider) is normally required to grant access to in-building physical infrastructure.

(3) Where the property owner has conferred exclusive rights to access in-building physical infrastructure, the holder of the exclusive right may be required to respond to requests for access or information.

(4) We do not propose any exemption from the in-building physical infrastructure access requirements to apply where an existing wholesale network is provided.

(5) We do not propose to provide rules for compensating damage to property.

Dispute resolution

Identity of the national dispute settlement body

QUESTION 45: Do you agree that Ofcom is the appropriate national dispute body throughout the UK across all of the dispute contexts described above?

QUESTION 46: What other bodies should be involved in resolving disputes when Ofcom lacks expertise?

Respondents, including other sectoral regulators, were near unanimous in agreeing that Ofcom should assume the role of national dispute settlement body under the Directive. Respondents also stressed the importance of involving other relevant sectoral regulators and Government departments with relevant policy responsibility, and raised concerns regarding the funding of disputes and their impact on smaller undertakings. There was also a suggestion that the Institute of Chartered Engineers could assist in resolving disputes about civil engineering works.

GOVERNMENT RESPONSE
Respondents generally agreed on the identity of the dispute settlement body, and the regulations appoint Ofcom to this role. Ofcom will be required to involve relevant sectoral regulators as appropriate and will have flexibility to source external expertise where it considers this necessary. Respondents' suggestions regarding relevant bodies have been forwarded to Ofcom. Several responses referred to options for arbitration and, while the regulations do not make such provision, parties remain free to use such facilities by mutual agreement. Ofcom will publish high level principles on undertakings' responsibilities and the handling of disputes, and may supplement these with more detailed guidance as and when appropriate.

Appeals of decisions resulting from disputes

QUESTION 47: Do you agree that the Competition Appeal Tribunal (CAT) is the correct appeal body for decisions from the dispute settlement body?

GOVERNMENT RESPONSE
Respondents to this question agreed unanimously that the CAT was the correct body for appeals of decisions by the dispute settlement body. The regulations appoint the CAT to carry out this function.

QUESTION 48: Do you agree that appeals of decisions by the dispute settlement body should be heard on a 'judicial review' standard and that this would encourage swift and effective dispute resolution?

This question generated extensive responses from telecoms operators, who largely disagreed with the suggestion that appeals should be heard on a judicial review (JR) standard. Conversely, most non-telecoms respondents agreed that a JR standard was appropriate. Some of the main arguments against JR made by telecoms operators are that merits-based appeals:

- incentivise decision-making bodies to make correct decisions, improving the overall quality of decisions;
- are consistent with Article 4 of the Framework Directive;
- provide a consistent regulatory environment and facilitate business and investment decisions;
- provide a faster definitive determination of a dispute;
- are critical to minimise the risk of vague and broad responses that deny legitimate access requests; and
- are necessary for pricing decisions.

GOVERNMENT RESPONSE

We welcome the range of detailed responses on this issue. We consider that the Directive does not require that appeals be heard on a broader standard than judicial review, and the regulations require the CAT to hear appeals on a JR standard. However, we note the concerns raised by telecoms operators in relation to the efficacy and general suitability of a JR standard, and will keep under review whether this delivers an effective appeal mechanism.

SECTION SUMMARY

(1) The regulations appoint Ofcom to act as the single national dispute settlement body across all five dispute contexts required by the Directive;
(2) Ofcom must seek input from other relevant statutory regulators where these exist, and will be able to source additional advice.
(3) Appeal of Ofcom's decisions will be to the Competition Appeal Tribunal, on a judicial review standard.
(4) Ofcom will be able to recover costs by charging for handling disputes, which may include the costs of other sectoral regulators involved in the process.
(5) Ofcom will produce implementation guidance, and may make administrative requirements in relation to the dispute process.

Enforcement and Penalties

Nature and operation of the enforcement and penalties system

QUESTION 49: Do you agree that financial penalties levied by Ofcom are appropriate?

QUESTION 50: Do you agree that Ofcom, as the dispute settlement body, is the correct body to enforce the collection of penalties?

Almost all respondents to this question agreed that financial penalties, imposed by Ofcom, would be an appropriate form of penalty. Two non-telecoms respondents disagreed with this approach, arguing that Ofcom should not impose penalties on companies it does not normally regulate. Responses also said that additional detail was necessary to assess appropriateness, that penalties should remain a last resort, and that imposition of penalties should not prejudice the ability of any party to appeal Ofcom's decision.

GOVERNMENT RESPONSE

Government is providing civil enforcement through the courts for most contraventions of the regulations, with one type contravention instead subject to financial penalties imposed by Ofcom. In particular:

- Failure to properly protect information obtained under the regulations is enforceable by third parties through the courts.
- Failure to comply with Ofcom determinations is enforceable through the courts, both by Ofcom and by parties to the determination.
- Failure to provide Ofcom with information relevant to a dispute is subject to a financial penalty imposed by Ofcom. There is a fixed maximum penalty of up to £2 million, as well as a daily penalty of up to £500 per day for ongoing contraventions. Any penalty must be appropriate and proportionate, and may be appealed to the CAT.

This regime will ensure Ofcom determinations can be enforced swiftly and without complex preliminary processes, and will meet the requirement for penalties that are "appropriate, effective, proportionate and dissuasive".

Proposed exemptions

Exemptions to sharing information about existing physical infrastructure

Article 4(7) – Allows exemptions from sharing information relating to infrastructure that is classified as critical national infrastructure, or that is not technically suitable for sharing.

QUESTION 39: Are the exemptions proposed under Article 4(7) appropriate? Should there be any further exemptions under this article?

Respondents made the following suggestions:

- A telecoms provider suggested an exemption on the grounds of "negative impact on competition.
- A PCN suggested that towers or masts below a certain height or diameter would be technically unsuitable.
- A respondent suggested that all sewers should be exempt.
- A respondent suggested an exemption based on security not just CNI.
- A water company suggested that mains including siphons should be exempt.
- A water company suggested that exempted diameter should be extended to a 1000mm rather than 225mm or 300mm.
- A gas company suggested that pipes with medium pressure should be exempt.
- A water company suggested only sewers between grades 1-3 would be suitable for sharing.

GOVERNMENT RESPONSE

We do not propose to introduce an exemption for refusal on the basis of negative impact on business. As set out above in the section "access to existing physical infrastructure", such impact should be considered when negotiating terms for access. We have considered all suggested exemptions, and the regulations provide the following revised exemptions:

(1) Any sewerage pipe with an internal diameter less than 225mm is exempted.
(2) Any part of a sewer up to 100m downstream of a combined storm overflow is exempted.
(3) Sewers in areas of known inundation or hydraulic incapacity are exempted. This could be based, for example, on companies' registers of properties at risk of sewer flooding (as per DG5 register or future equivalent/replacement).
(4) Sewers where cables would need to be installed in the invert of the sewer are exempted.
(5) Sewers subject to mandatory maintenance work in excess of normal requirements are exempted.
(6) Sewage pumping equipment is exempted.

We have also provided a mechanism for refusing requests on national security grounds, which will include any requests for information about critical national infrastructure.

Exemptions to information sharing and coordination relating to planned civil works

QUESTION 40: Are the exemptions proposed under Article 5(5) appropriate? Should there be any further exemptions under this article?

QUESTION 41: What might be suitable values for each of the placeholders indicated by 'XX' in the above text? Are there any other metrics that may be suitable for specifying civil works that should be exempted from information sharing requirements?

QUESTION 42: Are the exemptions proposed under Article 6(5) appropriate? Should there be any further exemptions under this Article?

Respondents suggested that "minor works" such as customer connections should be exempted under article 6(5).

Respondents suggested the following values for works that should be defined as insignificant in terms of cost, size or duration and exempted under article 6(5):

Infrastructure Type	Cost	Duration	Size
Telecoms	£40,000	25 days	1000 metres
Telecoms	£100,000	10 days	1000 metres
Water	£100,000	10 days	100 metres
Water	£250,000	15 days	200 metres
Water	£10,000	10 days	100 metres
Electricity	£100,000	180 days	1000 metres
Transport (DLR/trams)	£1,500,000	14 days	500 metres
Transport (Underground/Network Rail)	£7,000,000	14 days	500 metres

GOVERNMENT RESPONSE

We have considered all suggested exemptions, and the regulations provide the following revised exemptions:

(1) Works relating to customer connections are exempted.
(2) Works by water, sewerage, gas, and electricity undertakers with a value of less than £10,000 OR a duration less than 10 working days OR where the total length of the infrastructure in question is less than 100m.
(3) Works relating to the Docklands Light Railway and tramways with a value of less than £1,500,000 OR a duration less than 14 working days OR where the total length of the infrastructure in question less than 500m.

(4) Works relating to the railways and underground railways with a value of less than £7,000,000 OR a duration less than 14 working days OR where the total length of the infrastructure in question is less than 500m.
(5) Works by a PCN operator with a value of less than £40,000 OR a duration less than 25 working days OR where the total length of the infrastructure in question is less than 1000m. The total length requirement does not apply to wireless networks.

We have also provided a mechanism for refusing requests on national security grounds, which will include critical national infrastructure.

Review and variation of exemptions

QUESTION 44: Do you agree with our approach to the creation, removal, and modification of exemptions?

Most respondents agreed that the standard review period of five years for EU legislation is adequate. We also note a majority support for Ofcom and other regulators being able to request the Secretary of State to make, remove, or modify exemptions.

GOVERNMENT RESPONSE

Respondents largely supported our proposal that the Secretary of State should be able to make, remove, or modify exemptions, including on request of Ofcom and other statutory regulators. This proposal remains unchanged.

General matters

Optional Provisions of the directive

QUESTION 51: Do you agree with our decision not to implement the above optional provisions?

Most respondents agreed with the Government's approach of not adopting optional provisions of the directive and refraining from "gold plating".

GOVERNMENT RESPONSE
Respondents supported our proposal to implement the minimum requirements of the Directive. This continues to be our approach and is reflected in the regulations. Government policy is to not "gold plate" European directives, as set out in the Government's Guiding principles for EU legislation[4].

Technical/practical issues annex

QUESTION 52: Are there any other technical issues that are of significant importance (i.e. that will regularly be relevant in negotiations for infrastructure sharing)?

There were a range of detailed responses relating to technical issues relevant to providing access and coordinating works.

GOVERNMENT RESPONSE
We are grateful for the information provided. This has been shared with Ofcom for further consideration in their capacity as the dispute settlement body. This will help them understand the issues that respondents consider relevant to the operation of the Directive in their sectors.

[4] The Government's 'Guiding principles for EU legislation' document was published by the Department for Business, Innovation and Skills in 2013. It is available on the GOV.UK website: https://www.gov.uk/government/publications/guiding-principles-for-eu-legislation

Impact assessment

DCMS published a 'fast track' regulatory triage assessment as an annex to the consultation document. The consultation asked questions to gather further evidence in support of this assessment.

QUESTION 53: Do you agree with the assessment of firms within scope or do you believe that more / less firms will be impacted by the Directive? If you disagree, can you provide an estimate of the number of firms within scope?

QUESTION 54: Do you agree that the Directive will not lead to a notable increase in infrastructure sharing? If you disagree, can you provide an estimate of the volume and type of additional sharing that you think will take place?

QUESTION 55: Do you agree that the Directive will not lead to a large volume of disputes? If you disagree, can you provide an estimate of the volume and type of disputes that you think will take place?

QUESTION 56: Do you agree the Directive will not directly lead to a notable increase in information requests? If you disagree, can you provide an estimate of the volume and type of additional information requests that you think will take place?

QUESTION 57: Do you agree with this assessment of familiarisation costs or do you think costs will be higher / lower? If you disagree, can you provide an estimate of familiarisation costs?

Telecoms operators made the following main points:

- Most infrastructure sharing will continue to be through BT's passive infrastructure access SMP remedy.
- This access is likely to remain a relatively niche form of access. Dark fibre is more likely to be widely used. The Directive should therefore not generate large volumes of disputes.
- If use is extended beyond broadband networks e.g. to the business connectivity market, then usage is difficult to predict.
- Familiarisation costs are underestimated. Development of BT's PIA product was significantly more onerous and the Directive replicates this across multiple operators.
- Familiarisation estimates are broadly correct, though more time will be required to engage with the dispute settlement body.

Other respondents made the following main points:

- It is unclear if there will be an increase in infrastructure sharing.
- The Directive creates a climate for many and lengthy disputes.
- It is unclear whether a large volume of disputes will arise.
- Disputes will be minimal as sharing will be refused for diverse reasons.
- There will be substantial interest from telecoms operators in sharing rail infrastructure.
- An exemption for wholesale access would reduce the scope for disputes.
- It is not possible to estimate the number of requests under the Directive as demand is unknown.
- Estimated familiarisation costs are very conservative. The number of staff per company and time per member of staff has been underestimated.
- Familiarisation costs will likely be £40k or more for each business.

- Information requests will rise by about 30%; familiarisation costs will be circa 25% greater than estimated.
- Wage costs and time per member of staff are very low - costs could be 2-3 times higher.
- Costs across the electricity sector would be double the estimates. Policies, procedures and specifications will require development and review.
- Engineering costs to review sharing applications have not been assessed.

GOVERNMENT RESPONSE

We are grateful for the information provided regarding our economic analysis. Responses have been considered and, where appropriate, are reflected in our revised impact assessment which is published alongside this document. The independent Regulatory Policy Committee has confirmed that this is a non-qualifying regulatory provision and provided their opinion on the quality of the assessment. The regulations should be read in conjunction with the revised impact assessment, and not with reference to the consultation stage impact assessment.

Annex A: List of respondents

Listed alphabetically, the following 55 individuals, groups and organisations responded to DCMS's public consultation on proposed implementing measures of the Directive:

Anglian Water
Arqiva
Broadband Stakeholder Group
BT
CityFibre
Country Land and Business Association
Colchester Borough Council
Darlington Borough Council
EE
Electricity North Wales
Energy Networks Association
European Wireless Infrastructure Association
Firmus Energy
Forth Ports
Gamma
GNI (UK) Ltd
Home Builders Federation
HS1
Hyperoptic
Infrastructure Investors Group
KCOM
Kingston Upon Hull City Council
Linden Homes
Mike Kiely
Mutual Energy
National Grid
National Grid Electricity Transmission Ltd
NFU
NI Energy Industry
NI Water
NJUG
Northern Ireland Electricity Networks
Northumbrian Water
Ofgem
Ofwat
Office of Rail & Road
Passive Access Group
Phoenix Natural Gas Ltd
Scottish Government
Scottish Water
Severn Trent Water Ltd
South West Water
Southern Water Services Ltd.
Transport for London (TfL)
Thames Water
The Bristol Port Company
Three
UK Competitive Telecoms Association (UKCTA)
UK Major Ports Group
UK Power Networks
United Utilities
Virgin Media
Vodafone
Wessex Water
Wireless Infrastructure Group

One anonymous response was also received.

Annex B: Glossary

CAT: Competition and Appeals Tribunal

CNI: Critical National Infrastructure

JR: Judicial Review

PCN: Public Communications Network

SIP: Single Information Point

SMP: Significant Market Power

TTRO: Temporary Traffic Regulation Order

Department
for Culture
Media & Sport